S.B.Civil Writ Petition No.308/2007

Surpat Singh & Ors.

vs

The Addl. Civil Judge (JD) No.3, Bikaner & Ors.

Date of order : 15.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Ms.Bita Sipani, for the petitioners.
Mr.SK Pooniya, for the respondent no.2.

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Heard learned counsel for the parties.

The petitioners-plaintiffs are aggrieved against the order of the trail court dated 16.11.2006 by which the respondent no.2 Rameshwar Lal was impleaded as party in the trial court at the stage when the suit was pending for deciding two issues framed by the trial court.

According to learned counsel for the petitioners against the decree passed by the trial court, appeal was preferred and in appeal two issues were framed about locus standi of the plaintiff in maintaining the suit. The issues were sent to the trial court for deciding after evidence of parties and for sending the finding to appellate court. The trial was going

on for deciding those two issues only before the trial court, keeping the appeal pending before the first appellate court. During this trial of two issues, the defendant Kaushalya Devi died and according to plaintiffs-petitioners Kaushalya Devi had no legal representative. At this stage, the plaintiffs, therefore, submitted an application under Order 22 Rule 4A CPC and prayed that court may proceed without impleading anyone as party representing the defendant because the defendant had no legal representative. The applicant- respondent no.2 Rameshwar Lal submitted an application under Order 1 Rule 10 CPC stating therein that he was partner of defendant since beginning and therefore, he is necessary party. He also pleaded that after death of defendant and her husband, he is in possession of the suit property, therefore, his interest are also involved. The applicant also submitted that partnership deed is already on record and, therefore, he may be impleaded as party.

The trial court observed that there will be issue whether the applicant is sub-tenant or a partner and for that purpose, his presence is necessary. The trial court also observed that the applicant Rameshwar Lal has his livelihood from the shop in dispute itself and the tenant-defendant

Kaushalya Devi and her husband Poonamchand died, therefore, for deciding these two issues, the presence of applicant will be necessary.

It appears that the trial court failed to appreciate its limited jurisdiction as the matter was remitted to trial court by the first appellate court for deciding two issues and the trial court was not seized with issue of sub letting as that issue was not remitted to the trial court, therefore, the very foundation for passing the order, which is for deciding issue whether the applicant is sub tenant or a partner of the defendant firm was not there before the trial court. Therefore, impleading the applicant as party in the suit at this stage of trial for issues concern as remitted by the appellate court cannot be justified.

It appears that the trial court failed to appreciate the claim of the applicant who stated that he was partner with the defendant tenant. In that situation, he is not saying that at the time of death of original tenant he was carrying on business with the tenant as his family member. The partner cannot become tenant by virtue of his status as partner unless he is tenant by contract through any agreement with lessor or by operation of law on death of

original tenant and that can be on fulfilling requisite conditions for becoming tenant as per the provisions of the Rajasthan Premises (Control of Rent Eviction), 1950. In view of the above reason also, the order of the trial court proceeded on the wrong assumption of law.

The trial court also did not appreciate if the applicant had any right or interest in the property then whey he did not become party during the trial of the suit as there is no reason given in the application why he did not become party in the original suit or in first appeal. Virtually, there is no explanation for moving the application at such belated stage. It appears that trial court proceeded to implead the applicant as party only out of sympathy only.

In view of the above reasons, the order suffers from error of law and the trial court in fact, exceeded its jurisdiction by impleading the applicant-respondent no.2 as party in the suit.

At this juncture, it will be appropriate to observe that the trial court should have considered the application of the plaintiffs-petitioners filed under Order 22 Rule 4A CPC and could have appointed

appropriate person for conducing the case for and on behalf of the deceased, if facts so required. Therefore, the trial court should reconsider the application of the petitioners in accordance with the provisions of Order 22 Rule 4A CPC again.

In view of the above, the writ petition of the petitioners is allowed, the order of the trial court dated 16th Nov.,2006 is quashed and set aside and the application filed by the respondent no.2 under Order 1 Rule 10 CPC for impleadment of party is dismissed and the trial court should decide application filed by the petitioners under Order 22 Rule 4A CPC again in accordance with.

(PRAKASH TATIA), J.

c.p.goyal/-